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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,901	10/02/2003	David Tye	021878.0005US1	2357
34284	7590	06/16/2005	EXAMINER	
ROBERT D. FISH RUTAN & TUCKER LLP 611 ANTON BLVD 14TH FLOOR COSTA MESA, CA 92626-1931			OKEZIE, ESTHER O	
			ART UNIT	PAPER NUMBER
			3654	

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/678,901	TYE, DAVID	
	<b>Examiner</b>	<b>Art Unit</b>	
	Esther O. Okezie	3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 3/15/2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 3-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 7-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/11/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

The amendment filed on 3/15/2005 and the remarks presented therewith have been carefully considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1,2,7, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Erickson. It is noted that the applicant is claiming the subcombination of a gripper for gripping a bottle and not the combination of a gripper and a bottle.
2. Re claim1, Erickson discloses a hook capable of gripping the crown neck of a bottle during cleaning, capping, and filling, comprising:
  - a stationary gripping member (upper claws 2 and 10);
  - a biased gripping member (independent claws 5) that is biased toward the stationary gripping member by at least one spring (4) and is adapted to move away from the stationary gripping member as a result of pressure from the object being gripped (column 1, lines 40-52); and

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wherein the device is adapted to contact the object being gripped at four distinct points comprising less than twenty five percent of the total perimeter of the object (fig 1).

3. Re claim 2, the object has a three hundred and sixty degree circumference and the distinct points comprise less than ninety degrees of the arc (fig. 1)

4. Re claim 7, a guide (8) upon which the biased gripping member slides between gripped configuration and a released configuration (fig. 1).

5. Re claim 8, the stationary gripping member has a groove that cooperates to hold the object (claw-like termination; column 1, lines 47-48).

The recitations regarding gripping a particular item (a bottle) in the claims are insufficient to patentably distinguish the claimed apparatus from the prior art, because they relate only to the environment where the apparatus is used, but do not further describe or limit its structure.

1. Again Claims 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Schroder.

2. Re claim 9, Schroder discloses a method of transferring glass bottles by an apparatus capable of gripping the bottles during cleaning, filling, capping, comprising: providing a bottle having a neck with a circular cross section; and pushing a biased gripping member (42) over the neck of the bottle (see figs. 1 and 2). The apparatus is capable of transferring necks of varying diameters by automatic adjustment (column 1, lines 20-26). The apparatus contacts the bottle at either 2,3, or 4 discrete points along

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the circumference of the neck by the variability of tong fingers (42) and projecting portions 43 (fig. 4; column 2, lines 85-90).

3. Re claim 10, the tong fingers, which are biased closed by a spring (30), apply pressure to the bottle in engagement, adjusting the grip pressure to the diameter of the bottleneck (column 4, lines 70-90).

4. Re claim 11, the tong fingers (42) are separated by air pressure that is admitted through the cylinders (25), when the piston (28) is depressed the slides (39) of the tongs separate, releasing the bottle (column 4, lines 90-100).

5. Claims 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kronseder.

6. Re claim 9, Krosender discloses a transport star that includes a method of transferring bottles during cleaning, filing, capping, comprising: providing a bottle (2) having a neck with a circular cross section; and pushing a biased gripping member (17) over the neck of the bottle (see fig. 1), and gripping the bottle at four distinct points (20; see figs 3 and 4).

6. Re claim 11, the bottle is released by fingers (18 and 17) powered by a compressed air cylinder (column 5, lines 1-9).

***Response to Arguments***

Applicant's arguments have been fully considered but they are not persuasive. Furthermore, Applicant's arguments with respect to claims 1,2,7, and 8 have been considered but are moot in view of the new ground(s) of rejection.

Erickson discloses a hook that is capable of gripping the crown neck of a bottle at 4 distinct points covering less than 25% of the circumference of the bottle. The lower claws (5) slide along guide (8) and are held by the pressure of the object and biased by the spring (4).

As previously presented, Schroder discloses a bottle gripping assembly wherein a biased gripping member is pushed over the neck of the bottle and grips the bottle at four distinct points (42). The gripping fingers (42) are released from the bottle via air pressure cylinder (25).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO



KATHY MATECKI  
SUPERVISORY PATENT EXAMINER  
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